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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,100	06/01/2001	Reinhold Schmieding	P/1493-406	2429

7590

03/15/2004

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EXAMINER
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DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

18

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/872,100

Applicant(s)

SCHMIEDING, REINHOLD

Examiner

Danton DeMille

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the details of the different elements within the cross section as described in the specification. The computer-generated figures do not clearly show the details of the elements in cross section. Figures 14 and 15 for example are supposed to show the larger bone graft wedges 6 and 8 installed on either side of the smaller wedge 4 however none of these elements can be seen clearly. Elements 30 and 40 cannot be distinguished from the rest of the bone. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 103*

**Claims 1-4 and 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Puddu 5,620,448 in view of Anderson et al.**

Puddu teaches in column 4 the method of resecting the bone using an osteotome 28 to leave a bony hinge on the lateral side, opening the resection using the forked wedge tool 12, placing a bone plate 2 in a location spanning the open resection, removing the opening tool 12 and packing the open resection with autologous bone. There is no unobviousness to the specific type of material used for the packing material. Any conventional material would have been an obvious equivalent alternative. Anderson teaches the benefit of using at least two individual pre-formed wedge shaped sections of material so as to increase stability and does not shift, extrude

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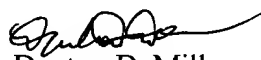
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or rotate after implantation. It would have been obvious to one of ordinary skill in the art to modify Puddu to use a composite bone graft as taught by Anderson to provide a bone graft that has greater stability and does not shift, extrude or rotate after implantation.

**Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 14 above and further in view of Urist.**

Urist teaches the advantages of using biodegradable polylactic acid polymer for use in making implants, column 5, lines 18-21. "Either purified BMP or its co-precipitate with tricalcium phosphate may be used." (column 4, lines 2-4). It would have been obvious to one of ordinary skill in the art to further modify Puddu to use a composite bone graft including biodegradable polylactide combined with hydroxyapatite or tricalcium phosphate as taught by Urist as another obvious equivalent alternative material for the graft to greatly increase the amount of new bone growth.

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11 March, 2004  
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Art Unit 3764